

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA                    )  
  )  
                  v.                                ) Criminal No.04-37 (Erie)  
  )  
GERALD C. DEIMEL                            )

**GOVERNMENT'S MOTION FOR CONTINUANCE OF SENTENCING HEARING**

AND NOW comes the United States of America, by its attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and James R. Wilson, Assistant United States Attorney in and for said District and respectfully requests that this Honorable Court grant a continuance of the sentencing hearing in the above matter and in support thereof sets forth the following:

1) The above matter is currently scheduled for sentencing on Wednesday, October 26, 2005, at 10 am.

2) The undersigned AUSA has a scheduling conflict inasmuch as another matter is scheduled in another Courtroom for the same time.

3) Counsel for the government also seeks a continuance to allow the filing of a brief Memorandum in Aid of Sentencing to set forth allegations of the defendant's execution of another fraud scheme involving health care insurance that resulted in a loss to victims in an amount in excess of \$350,000. This matter was investigated by Special Agent Norman Jackson of the (then) Pension and Welfare Benefits Administration Section of the United States

Department of Labor. Mr. Jackson will be present and available to testify at the time of sentencing.

4) The United States does not maintain that this information is relevant conduct as that term is construed under the regimen of the United States Sentencing Guidelines at Section 1B1.3. Rather, the Court should be aware of this activity for two reasons. The first potential use of this information is to serve as the basis for a decision to depart upward from the Guideline Range pursuant to Section 5K2.0 of the Sentencing Guidelines. The second potential use of this information is to inform the Court's decision in terms of where within the Guidelines Range the Court finds the appropriate sentence.

5) Moreover, the United States seeks a continuance on the grounds of fundamental fairness. This information is of sufficient importance that it should be brought to the Court's attention to allow the Court to determine whether it has any value in informing the Court's sentencing determination. Also, the defendant should have an opportunity to review this material prior to its presentation at the sentencing hearing.

6) On October 20, 2005, the undersigned Assistant United States Attorney spoke to counsel for the defendant, Mr. Segel, in order to advise him of the information possessed by the United States and to seek his position relative to the government's request for a continuance. Mr. Segel, based on consultation with his client, advised that the defense opposed any continuance of the

sentencing hearing. This opposition was predicated, at least in part, on the fact that family members of the defendant's who had planned to travel to Pittsburgh to be present for the sentencing hearing would be greatly inconvenienced in terms of their work and travel arrangements if the sentencing hearing was rescheduled. At least one of the family members is planning to travel from the Baltimore area.

**WHEREFORE,** the United States respectfully requests that this Honorable Court enter an order continuing the sentencing hearing to a date not less than 10 days beyond October 26, 2005.

Respectfully submitted,

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United States Attorney

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